

## **SECTION C**

### **ENVIRONMENTAL SERVICES OBLIGATIONS**

**1. APPLICATION FOR FEDERAL ASSISTANCE.** Recipient's "*Application for Federal Assistance (and Supporting Documentation)*" (dated TO BE COMPLETED AT TIME OF AWARD) is incorporated herein at **SECTION E, Attachment E.2.**

#### **2. SCOPE AND PURPOSE.**

**2.1. Background.** The Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the Defense of the United States of America. Certain military facilities are no longer required for that mission, and, in accordance with the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101-510 (10 U.S.C. Section 2687 note, as amended), the Department of Defense ("DoD") closed and plans to dispose of real and personal property at those facilities. The Department of Defense is authorized to dispose of real and personal property on the former Camp Bonneville (hereinafter "Bonneville," as defined in Section C.3.6 below) to the Recipient, as defined in Section C.3.22 below.

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the completion of all remedial action necessary to protect human health and the environment. Under this early transfer authority, DoD may transfer Bonneville to the Recipient (as said term is defined in Section C.3.22 below), which may assume responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section C.3.14 below). The geographic area in which work will be performed under this Agreement is set forth in the Technical Specifications and Requirements Statement (hereinafter the "TSRS," as defined in Section C.3.25 below), incorporated herein in Section E, Attachment E.1, and is identified as the Areas Covered by Environmental Services, (hereinafter the "ACES," as defined in Section C.3.1 below). This Agreement provides the funding, specifications and requirements for the Recipient's performance and completion of the Environmental Services in the ACES.

Cleanup of Bonneville is governed by CERCLA, the National Contingency Plan ("NCP"), the Prospective Purchaser Consent Decree (hereinafter the "PPCD," as defined in Section C.3.19) and other applicable laws and regulations. The Army has conducted investigations and site characterization under its own authorities under CERCLA and the Defense Environmental Restoration Program (DERP) and has identified both contaminated areas as well as uncontaminated areas.

Following the early transfer of the property, the Recipient will be obligated to comply with the PPCD in the cleanup of Bonneville under oversight by the Washington State Department of Ecology (hereinafter the "WDOE") to meet the above requirements of CERCLA, the NCP, other applicable laws and regulations, and the State requirements under the Model Toxics Control Act (hereinafter the "MTCA"). If inconsistencies are found between this Agreement and the PPCD after this Agreement has been signed, then the Parties will work toward a resolution, in accordance with Section D.9 of the ESCA.

This Agreement is of mutual benefit to the Army and the Recipient because it will facilitate early transfer and the immediate reuse of Bonneville by allowing the Recipient to perform the Environmental Services in conjunction with the Recipient's reuse of Bonneville. This Agreement, executed in anticipation of an early transfer, will allow the Recipient full access to the ACES in order to implement the Environmental Services and redevelop Bonneville.

This Agreement does not reduce or alter in any way the responsibilities and obligations of the United States under CERCLA, the NCP, or Section 330 of Public Law 102-484 ("Section 330"), except as otherwise provided in Section C.4.1.8 of this Agreement.

**2.2. Purpose.** The provisions of this Section of this Agreement establish the terms and conditions necessary for the completion of the Environmental Services required to obtain Site Closeout and the execution of Long-Term Obligations associated with such Site Closeout. The PPCD and TSRS establish the process for obtaining Site Closeout within the ACES. By execution of this Agreement, the Army and the Recipient concur with the TSRS, incorporated herein at Section E, Attachment E.1, and all documents and approvals referenced therein. This Agreement in no way restricts the Parties from modifying the Environmental Covenants, Conditions, and Restrictions (hereinafter "ECCR," as defined in Section C.3.12) and documents referenced therein, before or after the Environmental Services at the ACES have begun. However, any such modifications shall not eliminate or change the Recipient's or Army's obligations under this Agreement unless a concurrent modification is made to this Agreement in accordance with Section D.21.

**2.3. Scope.** The Recipient shall cause to be performed the Environmental Services, in consideration of the payment of a fixed sum by the Army in accordance with and subject to the provisions of this Agreement. The Environmental Services, to the extent required to be performed under this Agreement, shall satisfy the requirements of CERCLA and the NCP by satisfying the requirements provided in the PPCD. The Environmental Services will be completed in furtherance of the Recipient's approved Reuse Plan, as defined in Section C.3.23 below, integrated with reuse activities of Bonneville, all as more particularly described in the TSRS.

The PPCD establishes the process for obtaining Site Closeout within the ACES. By the execution of this Agreement, the Army concurs with the process set forth in the PPCD, and all documents and approvals referenced therein; however, this concurrence in no way limits the Recipient's responsibility to cause CERCLA, Resource Conservation and Recovery Act ("RCRA") and Clean Water Act compliance for the ACES by satisfaction of the PPCD requirements. Furthermore, this Agreement in no way restricts the parties to the PPCD from modifying the PPCD and documents referenced therein, pursuant to the terms thereof, before or after the Environmental Services at the ACES have begun; however, any such modifications will be coordinated with the Army in accordance with Section C.4.2.2 and shall not eliminate or change the Recipient's or Army's obligations under this Agreement.

In addition to providing the specified funding, the Army will retain the responsibilities and liabilities specified within this Agreement and its attachments. The Army's program oversight shall ensure that the

remedies implemented by the Recipient pursuant to the PPCD and TSRS are consistent with CERCLA and the NCP, Department of Defense Explosives Safety Board (hereinafter the “DDESB,” as defined in C.3.10) requirements, and other applicable laws and/or regulations. The Parties agree that the implementation of PPCD must be consistent with remedy requirements of CERCLA, the NCP, and other applicable laws and regulations, and that future modifications to the PPCD will likewise be consistent with such remedy requirements. The Recipient agrees to achieve Site Closeout and perform the required remedial actions in accordance with and subject to the provisions of this Agreement. In accordance with 42 U.S.C. 9620(h)(3)(C)(iii), the Army will grant to the Recipient the CERCLA warranty that all necessary response actions have been taken as provided in Section C.4.2.3.

### **3. DEFINITIONS.**

**3.1. Area Covered by Environmental Services.** The term “Area Covered by Environmental Services” or “ACES” means that entire area identified as the ACES on the map attached to the TSRS, incorporated herein Section E, Attachment E.1 within the boundary of Bonneville and the DNR Property, and groundwater contamination that originated from these areas.

**3.2. Army and Government.** The terms “Army” and “Government” are used interchangeably herein.

**3.3. Army Contingent Funding.** The term “Army Contingent Funding” means additional funding that may be required by the Army for MEC cleanup in accordance with Section C.4.3.2.2.

**3.4. Army’s Representative.** The Army’s representative, for performance oversight, is the Army Base Realignment and Closure Division, its designee, or successor agency, which is responsible to the office of the Secretary of the Army for environmental remediation of the ACES.

**3.5. Army-Retained Conditions.** The term “Army-Retained Conditions” means any of the following conditions within the ACES for which the Army remains fully responsible for hereunder:

**3.5.1.** Radiological Material;

**3.5.2.** Chemical Warfare Material or Biological Warfare Material;

**3.5.3.** Natural resource injuries, as defined in 43 C.F.R. 11.14(v), occurring as a result of historic releases of hazardous substances prior to conveyance of the property from the Army to the Recipient and natural resource injuries incurred that are incidental to the implementation of a selected remedy provided that the Recipient has complied with the NCP related to natural resources and has exercised reasonable and due care in the implementation of the remedy;

**3.5.4.** Unknown Conditions except for the obligations of the Recipient regarding Insured Unknown Conditions as set forth in Sections C.4.1.4 and C.4.1.13 below.

The term “Army-Retained Conditions” shall not include any other environmental conditions, including any naturally occurring substance or derivatives of products used in accordance with the state and Federal regulations, on, at, under, or emanating from the ACES, in its unaltered form, or altered solely through natural occurring processes or phenomena.

**3.6. Bonneville.** The terms “Bonneville” and “Camp Bonneville” means the approximate 3,020 acres of real property owned by the Army located in Clark County, Washington, and shown on the map as an appendix to the TSRS, incorporated herein at Section E, Attachment E.1.

**3.7. CERCLA Terms.** The terms “release,” “threatened release,” “hazardous substance,” “pollutant,” “contaminant,” “removal,” “remedial action,” and “response” have the meanings given such terms under CERCLA and United States Environmental Protection Agency (“EPA”) regulations implementing CERCLA.

**3.8. Chemical Warfare Material.** The term “Chemical Warfare Material” means items generally configured as a munition containing a chemical compound that is intended to kill, seriously injure, or incapacitate a person through its physiological effects. CWM includes V- and G-series nerve agents or H-series (mustard) and L-series (lewisite) blister agents in other-than-munition configurations; and certain industrial chemicals (e.g., hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)) configured as a military munition. Due to their hazards, prevalence, and military-unique application, chemical agent identification sets (CAIS) are also considered CWM. CWM does not include: riot control devices; chemical defoliants and herbicides; industrial chemicals (e.g., AC, CK, or CG) not configured as a munition; smoke and other obscuration producing items; flame and incendiary producing items; or soil, water, debris or other media contaminated with low concentrations of chemical agents where no CA hazards exist.

**3.8.1 Biological Warfare Materiel.** The term “Biological Warfare Materiel” refers to systems and system components designed to deliver any organism (bacteria, virus or other disease-causing organism) or toxin found in nature, as a weapon of war against personnel, animals, or plants.

**3.9. Cooperative Agreement.** The terms “Agreement” and “ESCA” mean this Cooperative Agreement for Environmental Services.

**3.10. Department of Defense Explosive Safety Board.** The term “DDESB” or “Department of Defense Explosives Safety Board” means the independent division of the Department of Defense that reviews and ensures safety during munitions responses by adhering to the DoD Ammunitions and Explosives Safety Standards presented in Department of Defense Directive (“DoDD”) 6055.9; and DoDD 6055.9-STD.

**3.11. Department of Natural Resources Property.** The terms “Department of Natural Resources Property” and “DNR Property” mean the property, located adjacent to Camp Bonneville and

as shown on the map as an appendix to the TSRS, that is owned by the Washington State Department of Natural Resources and previously leased by the Army.

**3.12. Environmental Covenants, Conditions, and Restrictions.** The terms “Environmental Covenants, Conditions, and Restrictions” and “ECCR” incorporated herein at Section E, Attachment E.1 means the document that identifies the interim environmental covenants, conditions, and restrictions that shall be included in the deed. These environmental covenants, conditions, and restrictions are necessary for the protection of human health and the environment prior to obtaining Site Closeout and the implementation of final remedies for the ACES. Following Site Closeout, the deed will be modified or supplemented to include permanent land use controls that apply to the property.

**3.13. Environmental Insurance Policies.** The term “Environmental Insurance Policies” means the Cleanup Cost Cap Policy (“Cost Cap Policy”) and Pollution Legal Liability Insurance Policy (“PLL Policy”), or similar policies, after review and approval by the Army, issued subsequent to the execution of this Agreement by an insurance carrier that is rated A.M. Best’s A- FSC IX or better.

**3.14. Environmental Services.** The term “Environmental Services” means investigation, remediation and related document preparation activities by the Recipient, necessary to fulfill the requirements of the TSRS and to achieve Site Closeout of the ACES, with respect to any Known and Insured Unknown Conditions, or Reasonably Expected Environmental Conditions, as well as any associated Long-Term Obligations, e.g., the long term monitoring of the wells and maintenance of institutional controls. This term does not include any Army Retained Conditions.

**3.15. Insured Unknown Conditions.** The term “Insured Unknown Conditions” means Unknown Conditions for which the Recipient or other named insured is insured pursuant to the Environmental Insurance Policies and/or Army Contingent Funding.

**3.16. Known Conditions.** The term “Known Conditions” means those environmental conditions on or under the ACES identified in the “applicable documents” subsection of the TSRS, incorporated herein at Section E, Attachment E.1 and includes Reasonably Expected Environmental Conditions as defined in Section C.3.21. The term “Known Conditions” does not include Army Retained Conditions as defined above.

**3.17. Long-Term Obligations.** The term “Long-Term Obligations” means the performance of any long-term review, monitoring, and operation and maintenance activities and reporting, to include land use control obligations, that are required following Site Closeout under the PPCD and TSRS.

**3.18. Munitions and Explosives of Concern.** The term “Munitions and Explosives of Concern” and “MEC,” which distinguishes specific categories of military munitions that may pose unique explosives safety risks, means: (A) Unexploded ordnance (UXO), as defined in 10 U.S.C. 101(e)(5); (B) Discarded military munitions (DMM), as defined in 10 U.S.C. 2710(e)(2); or (C) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

**3.18.1. Munitions Constituents (MC).** Any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710 (e)(3))

**3.18.2. Military Munitions.** The term “Military Munitions” means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense (DoD), the Coast Guard, the Department of Energy, and the National Guard or any other munitions resulting from the DoD use of Camp Bonneville. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof.

The term does not include chemical warfare agents and chemical munitions, Radiological Materials, wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include non-nuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed. (10 U.S.C. 101(e)(5)(A) and (B)).

**3.18.3. Munitions Response.** The term “Munitions Response” means response actions, including investigation, removal and remedial actions to address the explosives safety, human health, or environmental risks presented by unexploded ordnance (UXO) or discarded military munitions (DMM), or by munitions constituents (MC).

**3.18.4. Munitions Response Area.** The terms “Munitions Response Area” and “MRA” mean any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples include former ranges and munitions burial areas. A munitions response area is comprised of one or more munitions response sites.

**3.18.5. Munitions Response Site.** The terms “Munitions Response Site” and “MRS” mean a discrete location within a MRA that is known to require a munitions response.

**3.18.6. Unexploded Ordnance.** The terms “Unexploded Ordnance” and “UXO” mean military munitions that (1) have been primed, fuze, armed, or otherwise prepared for action; (2) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and (3) remain unexploded either by malfunction, design, or any other cause. (10 U.S.C. 2710(e)(9))

**3.19. Prospective Purchaser Consent Decree.** The terms “Prospective Purchaser Consent Decree” and “PPCD” mean the enforceable agreement between the Recipient and the WDOE entered into the Clark County Superior Court, acceptable to the Army, that controls cleanup of the ACES by the Recipient and requires the Recipient to remediate the ACES to achieve Site Closeout and thereby satisfy the Army’s CERCLA obligations. This PPCD follows the legal and regulatory requirements of RCW 70.105D.040. The PPCD requires the Recipient to enter into necessary land use restrictions on the ACES to ensure the temporary and long-term protection of human health and the environment.

**3.20. Radiological Materials.** The term “Radiological Materials” for purposes of this Agreement means solid, liquid, or gaseous material, derived from Army activities, that contains radio nuclides regulated under the Atomic Energy Act of 1954, as amended, and licensed by the Nuclear Regulatory Commission. It includes radioactive material, nuclear devices and nuclear components thereof, and radiographic and instrument calibration sources and various instrumentation and radio luminescent products manufactured for military applications. The term “Radiological Materials” does not include background radiation, radio luminescent dials, or products manufactured for non-military applications, such as radio luminescent signs, tungsten welding electrodes and household smoke detector components.

**3.21. Reasonably Expected Environmental Conditions.** The term “Reasonably Expected Environmental Conditions” means known contamination identified in each Remedial Investigation/Feasibility Study (RI/FS), investigation report, or Interim Action Work Plan for environmental sites included in the TSRS, for which the Recipient has the responsibility to bring to Site Closeout, even if there is a significant deviation in the quantity, volume, migration, disbursement, location, and/or concentration of any such contamination discovered at a particular site within the ACES.

**3.22. Recipient.** The term “Recipient” means the Clark County, located in Washington State. Clark County is an entity that is within the meaning of the term “local government agency” as such term is used in 10 U.S.C. Section 2701(d)(1), with which the Army is entitled to enter into “agreements on a reimbursable or other basis.”

**3.23. Reuse Plan.** The term “Reuse Plan” means the Camp Bonneville Reuse Plan, dated September 1998, updated on February 20, 2003, and revised on November 15, 2005.

**3.24. Site Closeout.** The term “Site Closeout” for purposes of this Agreement is the point in time when the Recipient has performed all Environmental Services, other than the continuation of Long-Term Obligations, as defined in Section C.3.17, and has obtained the following:

- (1) Notice of Completion from WDOE pursuant to the PPCD on or under the ACES, and
- (2) for property known or suspected to contain MEC, in addition to WDOE approvals: Recipient’s submission to and approval by the DDESB of a Statement of Removal of MEC.

**3.25. Technical Specifications and Requirements Statement.** The term “Technical Specifications and Requirements Statement” or “TSRS” means the mutually agreed upon document attached hereto that describes the known environmental site conditions and identifies the general scope of cleanup alternatives that will be performed by the Recipient. This term includes the services to be provided in order to achieve Site Closeout as defined at Section C.3.24.

**3.26. Unknown Conditions.** The term “Unknown Conditions” means those environmental conditions in the ACES that are not Known Conditions, but excluding Sections C.3.5.1, C.3.5.2, and C.3.5.3 of the Army Retained Conditions.

#### **4. OBLIGATIONS OF THE PARTIES.**

##### **4.1. Obligations of the Recipient.**

**4.1.1. General.** In consideration of the Army’s agreement to provide funds in accordance with the terms of this Agreement, the Recipient assumes the responsibility for the performance of Environmental Services. The Recipient assumes responsibility for the performance of the Environmental Services in accordance with and subject to the terms of this Agreement. The Recipient agrees that, subject to the provisions of Sections C.4.1.13 and C.4.2, it shall complete or cause to be completed the Environmental Services even if the costs associated therewith exceed the funds provided by the Army hereunder.

The Recipient shall perform the Environmental Services in accordance with and pursuant to the PPCD. The performance of the Environmental Services under the PPCD shall satisfy the Army’s responsibilities with regard to the Environmental Services under CERCLA and the NCP. By executing this Agreement, Army concurs with the process set forth in the PPCD and the documents and approvals therein. However, this concurrence in no way limits the Recipient’s responsibility to perform Environmental Services and thereby fulfill its obligation to satisfy CERCLA remedy requirements for the ACES by implementing the PPCD to Site Closeout.

The Recipient shall perform the Environmental Services and shall provide quarterly progress reports to the Army, in accordance with the TSRS, incorporated herein at Section E, Attachment E.1.

The Recipient’s obligation to perform Environmental Services is expressly conditioned upon the Army providing a sum not to exceed \$26,860,000 dollars for performing the Environmental Services and purchasing Environmental Insurance Policies, and, if necessary, Army Contingent Funding in accordance with the terms of this Agreement; provided, however, that to the extent the Army pays a portion of the funding set forth in Section B.5, but fails to pay the full amount set forth in that Section, or in the event the Agreement terminates pursuant to Section D.8, Recipient’s obligations shall be limited to the portion of Environmental Services funded by the Army. These conditions shall be subject to dispute resolution pursuant to Section D.9.



**4.1.2. Notice of a Complaint.** The Recipient shall provide the Army notice as soon as possible, but no later than seven (7) days after receiving notice of a claim by federal, state, or local regulators, or other third parties, of the existence of any environmental condition at the ACES that suggests an action is necessary for which the Army is responsible under this Agreement. If the Recipient is served with a complaint or written notice of a claim by the federal, state or local regulators, or other third parties, the Recipient shall provide the Army with a copy of such document no later than seven (7) days following service of such document.

**4.1.3. Covenant Not to Sue.** The Recipient covenants not to sue the Army and hereby waives any potential claims against the Army for those matters subject to Recipient's obligations to indemnify the Army under Section C.4.1.8.1 through C.4.1.8.7 and claims to the extent covered by Environmental Insurance Policies under Section 4.3 except for Army Contingent Funding for MEC.

**4.1.4. Discovery of Army-Retained Conditions or Unknown Conditions.** In the event the Recipient discovers an Army-Retained Condition or Unknown Condition at, on, from or affecting the ACES, the Recipient shall notify the Army of such conditions within thirty (30) days of receiving actual notice of such conditions, except that the Recipient shall notify the Army of the discovery of Radiological Materials; Chemical Warfare Material; or Biological Warfare Materiel within twenty-four (24) hours of such discovery. The Parties agree, pursuant to the terms of this Agreement, to confer within thirty (30) days of such notification regarding the scope of any initial investigation that may be necessary to ascertain whether such newly discovered Unknown Condition is properly categorized as a Known Condition, Insured Unknown Condition, or Army-Retained Condition. If a mutually agreeable solution is not reached within fifteen (15) working days of the commencement of discussions between the Recipient and the Army, the Parties reserve the right to recommend to the Army Grants Officer that the dispute or alternative dispute resolution process, as described in Section D.9, be initiated. The Army will retain full responsibility for Army-Retained Conditions. The Parties may agree to terms on which the Recipient agrees to perform the necessary Environmental Services for the Army-Retained Conditions, subject to Section D.7 and D.8 of this Agreement.

**Discovery of Insured Unknown Conditions.** In the event that the Recipient discovers any Insured Unknown Condition(s), the Recipient shall perform all the necessary Environmental Services in accordance with the PPCD and TSRS, and as required by applicable law for the Recipient to achieve Site Closeout, subject to the limitations of Section C.4.1.13. If the condition involves MEC, the Environmental Services rendered will be subject to DDESB approval, in addition to WDOE approval needed for Site Closeout.

Failure of Recipient to provide timely notice as provided in Sections C.4.1.2 and C.4.1.4 shall not limit in any way the responsibility of the Army for Army-Retained Conditions under this

Agreement, or under applicable law, except to the extent the Army's interests are materially or adversely affected by such late notice.

**4.1.5. Recipient's Actions with Respect to Army Obligations for Army Retained Conditions.** Notwithstanding the provisions of the preceding Section C.4.1.4, the Recipient shall have the right but not the duty to take or cause to be taken the following actions within the ACES with respect to Army-Retained Conditions:

**4.1.5.1. Investigation Activities.** If the Recipient discovers a condition it reasonably believes is an Army-Retained Condition other than a condition subject to Section C.4.1.5.2, it shall use its reasonable efforts to avoid incurring costs or obligations with respect to the condition by seeking to ascertain whether such condition is in fact an Army-Retained Condition before incurring such costs or obligations.

Nothing in this Agreement shall be construed to authorize the Recipient to seek reimbursement from the Army for costs solely associated with the initial investigation needed to ascertain whether a condition is properly categorized as an Army-Retained Condition to the extent that the initial investigation demonstrates that the conditions at issue are not Army-Retained Conditions.

**4.1.5.2. Imminent Threat.** Recipient may take any immediate action in accordance with this Section C.4.1.5.2 to address an imminent threat to human health or the environment if required by a regulatory agency, or if in Recipient's reasonable judgment, such action is necessary to address an imminent threat to human health or the environment.

The Recipient shall have a right, but not the duty, to take action and may seek reimbursement from the Army for response costs related to Army Retained Conditions where (a) notification cannot practicably be provided to the Army in accordance with the terms of Section C.4.1.4 above before such action needs to be taken for the protection from the imminent threat, or (b) notification is provided to the Army before such action needs to be taken and the Army agrees to permit the Recipient to take such action under terms agreed to by the Parties. In the event that Recipient provides notification to the Army before such action needs to be taken but the Army cannot or will not provide a timely response to such threat, the Parties reserve their rights to seek and expedite dispute resolution as provided in Section D.9.

**4.1.5.3. Notice and Dispute.** To the extent the Recipient takes or causes to be taken actions in accordance with Section C.4.1.5.1 or Section C.4.1.5.2, the Recipient shall provide notice of such action to the Army as soon as practicable. If the Army disputes an action taken by the Recipient under Section C.4.1.5.2, the Army may engage in dispute resolution in accordance with Section D.9.

**4.1.6. Identification of Army Obligations.** If the Recipient discovers a condition it reasonably believes is an Army Obligation, other than a condition subject to Section C.4.1.5.2, it shall use its reasonable best efforts to avoid incurring costs or obligations with respect to the condition by seeking to ascertain whether such condition is in fact an Army Obligation before incurring such costs or obligations. To the extent the Recipient incurs costs or obligations with respect to an Army Obligation despite the Recipient's use of reasonable best efforts to avoid incurring such costs, the Recipient may seek reimbursement from the Army, subject to the dispute resolution provisions of Section D.9, provided, however, that if said condition is an Army Obligation hereunder, Recipient's reasonable investigation costs will be reimbursable hereunder.

**4.1.7. Information Obtained by the Recipient.** In the event Army-Retained Conditions are discovered, the Recipient shall provide to the Army all information obtained or developed by the Recipient with respect to such Conditions.

**4.1.8. Indemnification / Limited Waiver of Statutory Rights.** In consideration of the funds available under this Agreement, including Army Contingent Funding, the transfer of Bonneville, and other terms of this Agreement, Recipient agrees that it shall, upon the execution of this Agreement and irrespective of enforcement or termination pursuant to Section D.8 and except for Army-Retained Conditions as defined in Section C.3.5, indemnify the Army for:

**4.1.8.1.** any response cost claims for activities required to be performed or actions taken by the Recipient as all or part of the Environmental Services;

**4.1.8.2.** all personal injury or property damage claims to the extent caused by the Recipient or its contractors in the course of performing the Environmental Services;

**4.1.8.3.** all natural resource injuries pertaining to releases of hazardous substances, pollutants or contaminants but only to the extent that such damages were caused or contributed to by the actions of the Recipient or its successor in interest;

**4.1.8.4.** all costs associated with additional remediation required on or within the ACES as a result of a change in land use from that contained in the Reuse Plan, as defined in Section C.3.23, at the time of the execution of this Agreement;

**4.1.8.5.** all costs associated with correction of a failure of a remedy after Site Closeout has been achieved, except as otherwise provided in Section C.4.1.13.4(vi)(b);

**4.1.8.6.** all costs associated with or arising from any negligent acts or omissions or willful misconduct of the Recipient in the course of performing or in the

performance of the Environmental Services or implementing remedial actions in accordance with the PPCD;

**4.1.8.7.** all costs associated with remediation of new pollution conditions caused by the Recipient, Recipient's successors, or contractors engaged by the preceding entities; and

**4.1.8.8.** all costs associated with a determination by WDOE under the PPCD that the Recipient or its contractors has failed to implement the remedial actions or a failure to perform the Environmental Services, in whole or in part, to achieve Site Closeout; provided, that this indemnification obligation shall only arise if the Army has provided the required funding under this Agreement and, provided further, that any disputes related to this Section C.4.1.8.8 shall not be subject to the Dispute Resolution under Section D.9 of this Agreement.

The Army shall, with respect to the above indemnities, cooperate with and assist in the defense provided by the Recipient, including, but not limited to, providing prompt notice of any claims, lawsuits, or notices from any claimant or agencies. The Parties agree that the provisions of this Section limit the Army's indemnification obligations under Section 330 of Public Law 102-484 to the extent that the Recipient has assumed certain indemnification obligations under this Section C.4.1.8.

**4.1.9. Financial & Technical Assurances.** The Parties agree that the Recipient has provided financial and technical assurances reasonably acceptable to the Army to enable the Army to meet the Army's requirements of 42 U.S.C. Section 9620(h)(3)(C).

**4.1.10. Reports.** In order to assure appropriate documentation for the Army to execute the CERCLA covenant, the Army may request that the Recipient provide additional information concerning the environmental condition of the ACES. The Recipient shall provide access to any documents in its possession containing such requested information to the Army as soon as possible after such request is made.

**4.1.11. Access.** The Recipient shall promptly provide the Army and any officially concerned Federal Government agency with all rights to access onto the ACES pursuant to environmental response access rights reserved by the Army in the transfer documents.

The Recipient may condition the provision of such rights on restrictions on the time and manner of access and conduct of activities, provided that such restrictions do not unreasonably delay or interfere with the Army's performance of environmental responsibilities. The Recipient recognizes and agrees to continue to accommodate the Army's need for mutually agreed to office space for on-site personnel needed to oversee the Recipient's performance of Environmental Services at no cost to the Army.

**4.1.12. Public Participation.** The Recipient shall be responsible for meeting the public participation requirements as set forth in the TSRS.

**4.1.13. Recipient's Performance Obligation.**

**4.1.13.1.** Recipient shall be responsible for all actions necessary to accomplish the performance of all Environmental Services, as defined in C.3.14.

**4.1.13.2.** The Recipient is also responsible for remediating all Known Conditions within the ACES, to include any costs incurred that exceed coverage under the Environmental Insurance Policy and Army Contingent Funding.

**4.1.13.3.** With respect to the discovery of Insured Unknown Conditions, the Recipient is responsible for remediation up to the amount of proceeds received by the Recipient and Recipient's successors under the terms of the Environmental Insurance Policies acquired by the Recipient for such Insured Unknown Conditions.

**4.1.13.4.** After Site Closeout and after the Army grants the CERCLA Warranty, the Recipient's continuing obligations that extend beyond the term of the ESCA will include the following:

- (i) the performance of Long-Term Obligations, as defined in C.3.17;
- (ii) further remedial actions required as a result of a proposed change in land use (different land use than anticipated in the Reuse Plan, as defined in Section C.3.23);
- (iii) enforcement of applicable provisions of any Environmental Insurance Policy available to cover costs for remedial actions within the scope of coverage;
- (iv) corrective action required due to failure of a final remedy;
- (v) continuing indemnification obligations under Section C.4.1.8; and
- (vi) With regard to munitions response actions for MEC within the ACES by the Recipient, as more particularly described in the TSRS:
  - (a) the Recipient shall be responsible for the removal or remediation of MEC within the areas and to the depths that were necessary to achieve Site Closeout under the PPCD and consistent with DDESB requirements. The Recipient shall also be responsible for the implementation and administration of the land use controls and any other Long-Term Obligations as may be required under the PPCD and consistent with DDESB Requirements to achieve Site Closeout. Such implementation and administration of land use controls may be evidenced by the filing by the Recipient with WDOE and the Army of an annual compliance report. This report shall certify, after inspection, that all components of land use controls are in place, and reporting any apparent violations of the land use controls, and describing actions, if any,

taken in response to such violations. The annual reports shall be filed as required under the PPCD and the Long-Term Operation and Maintenance Plan.

- (b) Except as otherwise provided in Section C.4.1.8, the Recipient shall not be liable for any required remediation or response actions for MEC discovered beyond the depths identified in Section 4.1.13.4(vi)(a) and in areas covered by Land Use Controls, provided the Recipient: has appropriately implemented and administered the land use controls as provided above and implemented any Long-Term Obligations required under the PPCD. The failure to remove such MEC shall not be considered a failure of a remedy for the purposes of Section 4.1.8.5. For purposes of this Section C.4.1.13(vi), the Parties agree that if the above referenced land use controls have been appropriately implemented and administered and there is a violation of such land use controls, the mere occurrence of the violation will not be considered remedy failure under this Agreement. Any dispute as to whether said land use controls or other Long-Term Obligations have been appropriately implemented and administered will be subject to the Dispute Resolution Process set forth in Section D.9 of this Agreement.

#### **4.2. Obligations of the Army.**

**4.2.1. Army Obligations.** The obligations of the Army under this Section C.4.2 may be collectively referred to as “Army Obligations.” Army Obligations include, without limitation, responsibility for Army-Retained Conditions, as defined in Section C.3.5 above.

**4.2.2. Oversight of the ESCA Implementation.** In addition to the Army’s agreement to fund the Recipient’s performance of the Environmental Services, subject to Section C.4.1.13, in accordance with the TSRS, the Army shall be given an opportunity to review for concurrence all decision documents as listed in Table 2 of the TSRS, and all proposed amendments to the final decision document and PPCD. The Recipient will provide copies of the deliverables as listed in the TSRS. The scope of the Army’s review shall be to ensure that the remedies implemented by the Recipient are consistent with CERCLA, the NCP, and other applicable laws and/or regulations such that the CERCLA Warranty may be provided upon Site Closeout. The Army shall provide comments within fifteen (15) days of receipt of such documents. In its review of final decision documents, if the Army requires a remedy that is beyond the scope of the proposed activities described in the TSRS Remedial Activities Table, the Parties reserve the right to invoke Dispute Resolution as provided in Section D.9 to ensure such consistency as provided above and to resolve any increase in costs from the Army imposing changes to the remedy as provided in Section D.9.2.

**4.2.3. CERCLA Covenant.** The Army shall, upon the request of the Recipient or its successors, issue the warranty required by CERCLA Section 120(h) (“CERCLA Warranty”) within 60 days of the Recipient providing a written request to the Army for the issuance of the CERCLA Warranty, provided that such written request includes documentation required for Site Closeout and necessary approvals by WDOE, Army, and/or DoD for the applicable portion of the ACES. The Army agrees to provide the CERCLA Warranty for particular portions of the ACES as Site Closeout is achieved. To the extent new legal descriptions must be prepared in order for the CERCLA Warranty to be recorded, the Recipient shall bear the costs of preparing such legal descriptions.

**4.2.4. Obligations Under CERCLA.** The Army is responsible for its obligations and responsibilities under CERCLA Section 120, except for those actions that constitute the performance of Environmental Services by the Recipient hereunder and as otherwise provided in Section C.4.1.13 in this Agreement. For purposes of CERCLA Section 120, Recipient’s or any successor, assignee, transferee, lender, lessee or contractor of the Recipient (collectively “Transferee”), potential or actual future status as operator or owner of Bonneville will not relieve the Army of its obligations hereunder and under CERCLA Section 120 except to the extent the activities of the Recipient or Recipient's successors cause a release or a threatened release, which was not related to the reasonable performance of the Environmental Services, of a hazardous substance, pollutant or contaminant.

**4.2.5. Access.** The Army shall, upon request, promptly provide the Recipient and any party performing Environmental Services with all rights to access onto or into any real property, buildings or equipment for which the Army has legal authority to provide such rights, and with all rights to conduct any activities necessary to perform the Environmental Services upon such real property, buildings or equipment for which the Army has legal authority to provide such rights. The Army may condition the provision of such rights on restrictions on the time and manner of access and conduct of activities, provided that such restrictions do not unreasonably delay or interfere with the performance of the Environmental Services.

**4.2.6. Liability.** If the death of or injury to any person, or the loss of or damage to any property, is caused by the Army in the course of its use of the ACES, or in the performance by the Army of Army Obligations hereunder, the liability, if any, of the Army therefore shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended) or otherwise provided by law.

**4.2.7. Army Indemnification.** Except as provided in Section C.4.1.8, with regard to the ACES, the Army recognizes its obligation to hold harmless, defend, and indemnify the Recipient and any successor, assignee, transferee, lender, or lessee of the Recipient as provided for and limited by Section 330 of the Department of Defense Authorization Act of 1993, as amended (“Section 330”), and to otherwise meet its obligations under the law in this Agreement. The Army specifically agrees that the provisions of Section 330 will be fully applicable to claims

against the Recipient for personal injury or property damage that results from or is in any manner predicated on the existence of MEC on or under the ACES.

**4.2.8. Army Actions.** The Army shall take all necessary actions required hereunder and under applicable law with respect to Army-Retained Conditions and Army Obligations, and shall take all actions required hereunder to fulfill its responsibilities under 42 U.S.C. 9620(h). For Army Retained Conditions under the TSRS, the Army will timely:

1. Assess, inspect, investigate, study, and remove or remediate, as appropriate, the release of a hazardous substance, pollutant, or contaminant, from or on the ACES; and
2. Settle or defend any claim, demand, or order made by federal, state, or local regulators or third parties in connection with any release of a hazardous substance, pollutant, or contaminant from or on the ACES; and
3. The Army will make diligent efforts to identify and initiate actions within thirty (30) days after receiving the above-referenced notice from the Recipient, pursuant to Sections C.4.1.4 and C.4.1.5. In the alternative, the Parties may amend this Agreement or enter into an additional agreement by which the Army will provide funds to the Recipient to enable the Recipient to take such actions, subject to Sections D.8. and D.9.

**4.2.9. Minimize Interference with Recipient's Actions.** In performing environmental cleanup activities hereunder, the Government shall minimize interference with the use of the ACES by the Recipient and its successors, assigns, transferees and tenants to the extent practicable. Except as provided in Section D.9.2, the Government assumes no liability for any interference with the use of the ACES that may be caused by environmental cleanup activities. However, to the extent permissible under Federal rules and regulations, the Government shall require that its contractors have general liability insurance for their negligent acts and errors and omissions insurance.

**4.2.10. Army Retained Condition.** To the extent the Parties disagree as to whether an environmental condition constitutes an Army Retained Condition or as to the action required in response to such Army Retained Condition (including the timing of such action in consideration of the Recipient's development plans), the matter may be submitted to dispute resolution in accordance with Section D.9, and the Recipient may take any action necessary in accordance with Sections C.4.1.4 and/or C.4.1.5, as part of dispute resolution, and seek reimbursement for the costs associated with such actions, subject to the provisions of Section C.4.1.4 and/or C.4.1.5.

**4.2.11. Minimize Interference with Recipients Actions.** The Army has provided and shall provide project-related data and documentation contained in the administrative record



to the Recipient upon conveyance of title to the Recipient. This data includes, but is not limited to the following: soil boring logs; test pit logs; monitoring well construction details/logs; test results; chemical analytical data for all media; data validation reports; land survey reports, documents of soil boring, monitoring well, removal action and other pertinent physical locations; field logbooks; meeting notes; relevant regulatory agency correspondence, documents required to compile full and administrative record for all reasonably requested investigation, cleanup, and reporting commenced prior to the effective date of this Agreement. The date for providing such data will be agreed upon by the Parties. The Recipient may also request that the Army provide additional information concerning site conditions for the ACES and if such information is reasonably obtainable without significant cost and releasable by the Army in accordance with applicable law, the Army shall provide reasonable access to such requested information to the Recipient within thirty (30) days of the Recipient's written request for such information, or as soon as is reasonably possible thereafter. Allocation of extraordinary reproduction and search costs shall be governed by the Freedom of Information Act and its implementing regulations and policies. The Recipient and the Army agree that if any of the documents identified above are missing and those documents are required to achieve Site Closeout, the Army will use diligent efforts to locate such documents and provide access to them promptly to the Recipient.

**4.2.12. Army Obligations.** The Army will perform the Army Obligations in a manner that will not unreasonably delay the Recipient's performance of Environmental Services.

**4.2.13. Army Approval.** Wherever the terms of this Agreement provide for approval by the Army, such approval shall not be unreasonably withheld or delayed, and, at minimum, shall be provided within approval timelines under the PPCD, as applicable.

**4.2.14. Documents Provided to Recipient.** With regard to Army Obligations hereunder, the Army will provide to the Recipient copies of any and all documents submitted to the WDOE at the same time said documents are submitted to WDOE. The Recipient shall have the right, hereunder, to review and comment on these documents. The Parties will work together to avoid adverse impacts to the Recipient for proposed actions for the Army Retained Conditions.

**4.2.15. Federal Bureau of Investigation ("FBI") Range.** Notwithstanding anything in this Agreement to the contrary, the Army shall continue to be responsible for required remedial activities associated with the FBI Range located in the ACES. The Parties may agree to terms on which the Recipient agrees to perform the required remedial activities for the FBI Range, subject to Section D.7 and D.8 of this Agreement.

#### **4.3. Insurance and Related Liability.**

**4.3.1. General Liability.** The Recipient shall either self-insure or shall carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less

than \$ 5,000,000 dollars, or other amount as agreed to by the Parties, in the event of bodily injury and death to any number of persons in any one accident.

**4.3.2. Environmental Insurance and Army Contingent Funding.**

**4.3.2.1. Environmental Insurance.** The Recipient shall obtain, carry and maintain Environmental Insurance Policies acceptable to the Army and afford protection with limits of liability in the amounts set forth in Section 3.4 of the TSRS. The Army shall review and concur with these policies prior to such acceptance. The Environmental Insurance Policies shall be written in accordance with the requirements outlined in Section 3.4 of the TSRS, unless otherwise agreed to by the Parties after due consideration of policy options. Such policies shall be consistent with the requirements outlined in the TSRS, subject to Sections D.8.2 and D.10.1.

The Recipient will provide to the Army a certificate of insurance evidencing the insurance required and will also deliver if necessary, no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

**4.3.2.2. Army Contingent Funding.** The Army will, as specified below, provide Army Contingent Funding to the Recipient in the event the Recipient exceeds costs allocated for Munitions Response associated with ACES. Such funding will only be available upon the occurrence of the following: (1) the Recipient has expended ESCA funding in excess of \$10,700,000 allocated for Munitions Response; and (2) the Recipient has, in addition to (1), expended an amount in excess of 20% of \$10,700,000, which equals \$2,140,000. Once these expenditures have occurred, the Army and Recipient will, as costs are incurred, proportionately share the actual incurred costs (without additional profits to the Recipient or its successors) of Munitions Response on a 90% and 10% basis by the Army and Recipient, respectively, to achieve Site Closeout for Munitions Response. Army Contingent Funding shall not exceed \$7,704,000. The Army Contingent Funding is only available until the Recipient achieves Site Closeout for Munitions Response.

**4.3.3. Worker's Compensation.** If and to the extent required by applicable law, the Recipient will either self-insure or carry and maintain worker's compensation or similar insurance in form and amounts required by law. Any such insurance policy will provide a waiver of subrogation by the Recipient of any claims the Recipient may have against the Army, its officers, agents, or employees except for those asserted by third parties in their own right. In no circumstances will the Recipient be entitled to assign to any third party rights of action that the Recipient may have against the Army.

**4.3.4. General Liability Policy Provisions.** All general liability insurance which the Recipient carries or maintains or causes to be carried or maintained pursuant to this Section C.4.3 will be in such form, for such amount as specified above, for such periods of time and with such insurers as the Army may approve, which approval shall not be unreasonably withheld or delayed. All policies issued by the respective insurers for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after receipt by the Army of written notice thereof; and provide a waiver of subrogation by the Recipient of any claims the Recipient may have against the Army, its officers, agents, or employees. In no circumstances will the Recipient be entitled to assign to any third party rights of action, which the Recipient may have against the Army.

**4.3.5. Delivery of Policies.** The Recipient will provide to the Army a certificate of insurance evidencing the insurance required by the Recipient and will also deliver, no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

## **5. GENERAL PROVISIONS.**

### **5.1. Term of Agreement.**

**5.1.1.** This Agreement shall be deemed null and void if Bonneville is not conveyed by Deed to the Recipient by October 1, 2006. The effective date of this Agreement will be no earlier than the Governor approving the Covenant Deferral Request, the entry of the PPCD into Clark County Superior Court, and the subsequent delivery of the executed Early Transfer Deed. This Agreement will not become effective until the Recipient acquires the Environmental Insurance Policy as outlined in Section C.4.3 of this Agreement and Section 3.4 of the TSRS or as may be otherwise agreed by the Parties.

**5.1.2.** This Agreement shall remain in effect in accordance with B.2 subject to earlier termination pursuant to Section D, or extension pursuant to Section B.

**5.1.3.** The obligations of the Parties that shall survive the term of this Agreement, identified in Section B.2, shall include but is not limited to the following:

- 1.** the obligations of the Recipient to maintain compliance with the Early Transfer deed provisions, all environmental decision documents, Site Closeout requirements, and the land use covenants as required under the PPCD, and compliance with any applicable Long-Term Obligations;
- 2.** the Recipient's obligations to perform the Environmental Services associated with Insured Unknown Conditions; and

**3.** the Recipient and Army Obligations under Sections C.4.1.1, C.4.1.8, 4.1.13, C.4.2.1, C.4.2.2, C.4.2.4, C.4.2.7, C.4.2.10, C.4.3, and Section D.

**5.2. Successors and Assigns.** The Recipient shall remain liable for performing its obligations under this Agreement, without regard to the potential for portions of the Bonneville to be transferred to future owners or tenants, in furtherance of the Site redevelopment objectives and without regard to the possible transfer of portions of the Recipient's liability under the PPCD. Nothing in this Agreement shall be construed to authorize the Recipient to assign any of its responsibilities or obligations under this Agreement or all or substantially all of the Recipient's obligations under the PPCD to a third party without the prior approval of the Army or make any subsequent owners or occupants of Bonneville a successor or assign under this Agreement. All obligations and covenants made by the Parties under this Agreement will bind and inure of any successors and assigns of the respective parties, including but not limited to Clark County, Washington, or any other entity designated as successor or assign pursuant to any applicable law, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

**5.3. Severability.** If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

**5.4. Waiver of Breach.** No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party and no "course of conduct" shall be considered to be such a waiver, absent a writing expressly waiving such a provision.

**5.5. Notices.** Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

To the Army:

Mr. Bill O'Donnell  
Program Manager, Office of the Assistant Chief of Staff  
Installation Management (DAIM-BD)  
600 Army Pentagon  
Washington, D.C. 22310-0600  
Tel: (703) 601-1570  
Fax: (703) 601-0544

To the Recipient:

Director of Public Works  
Clark County

P. O. 9810  
Vancouver, WA 98666-9810  
Tel: (360) 397-6118

**5.6. Representations.**

**5.6.1.** The Army represents that:

1. it is fully authorized to enter into this Agreement;
2. the Recipient can fully rely on the data provided to the Recipient or its contractors by the Army or the Army's contractors for purposes of performing the Environmental Services and making disclosures required under applicable law; and
3. The information contained in the documents identified in the applicable documents Section of the TSRS, fairly and accurately represents the Army's actual knowledge of the nature and extent of contamination within the ACES.

**5.6.2.** The Recipient represents that:

1. it is fully authorized to enter into this Agreement; and
2. it enters this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act and that any provision of this Agreement that states or implies that the Army will reimburse the Recipient for specific costs incurred are wholly subject to the Anti-Deficiency Act and that the Army's obligations are subject to that law.

**5.7. Conflict of Interest.** The Recipient shall ensure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

**5.8. Access to and Retention of Records.** The Recipient shall afford any authorized representative of the Army, the Department of Defense, or the Comptroller General, or other officially concerned Federal government agency access to and the right to examine all records, books, papers, and documents, including records in automated forms ("Records") that are within the Recipient's custody or control and that relate to its performance under this Agreement. This right of access to records shall not include attorney client communications, attorney work product or other legally privileged documents. The Recipient shall retain all such records intact in such form, if not original documents, as may be approved by the Army or other officially concerned government agency, which approval shall not be unreasonably withheld, for either at least thirty (30) years following completion or termination of this Agreement or transfer all such records into Army custody, whichever occurs first. Access to the Recipient's records will be during normal business hours, and the Army or other officially concerned federal government agency will give the Recipient seventy-two (72) hours prior notice of its intention to examine the Recipient's

records, unless the Army or other officially concerned federal government agency determines that more immediate entry is required by special circumstances. The Recipient will have no claim due to such entries against the Army or other officially concerned government agency, or any officer, agent, employee, or contractor thereof.

**5.9. Change of Circumstances.** Each party will promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such party's ability to carry out any of its obligations under this Agreement.

**5.10. CERCLA Requirements.** For purposes of 42 U.S.C. Section 9620(h)(3), this Agreement shall not increase, diminish, or effect in any manner any rights or obligations of the Recipient or the Army with respect to the ACES.

**5.11. Officials Not to Benefit.** The Recipient acknowledges that no member or delegate to the United States Congress, or resident Commissioner, shall be permitted to share in any part of this Agreement or receive any benefit that may arise there from.

**5.12 Force Majeure.** The Parties shall perform the requirements of this Agreement within the schedules and time limits set forth herein unless the performance is prevented and delayed by events that constitute force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of a party and which cannot be overcome with due diligence. If either Party disputes whether an event constituting force majeure has occurred hereunder, the dispute resolution set forth in Section D.9 may be invoked.

--- END OF SECTION C ---